

REMARKS

Previously, Applicant received an Office Action dated November 4, 2008 (“*Office Action*”). At the time of the *Office Action*, Claims 1-21 were pending, of which, the Examiner rejected Claims 1, 4-19, and 21 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,684,945 to Chen et al. (*Chen*) and Claims 2, 3, and 20 under 35 U.S.C. § 103(a) over *Chen* in view of U.S. Patent No. 5,485,626 to Lawlor et al. (“*Lawlor*”). Applicant has amended Claims 1, 2, 12, 14, 15, 17, 18, and 19. Applicant respectfully traverses these rejections.

I. Claim Rejections under 35 U.S.C. § 102

The Examiner rejects Claims 1, 4-19, and 21 under 35 U.S.C. § 102(b) over U.S. Patent No. 5,684,945 to Chen et al. (*Chen*). Applicant respectfully traverses these rejections.

A. *Chen* does not disclose all of the limitations of Claim 1

Applicant respectfully submits that *Chen* fails to disclose, teach, or suggest, all of the elements recited in Claims 1, 4-19, and 21. For example, *Chen* fails to disclose, teach, or suggest the following limitations of Claim 1:

determining a system usage pattern of a first application, the system usage pattern indicating a change in the system usage of the first application from a first time period to a second time period.

The Examiner refers to Col. 87, lines 53-56 of *Chen* for teaching a system usage pattern. See *Office Action*, p. 3 and 14. This passage merely discloses “system statistics,” but not a system usage pattern indicating a change in system usage from a first time period to a second time period:

The statistics being filtered and alarmed may be normal system statistics. However, these statistics may also be statistics defined by an application, or user-generated program running on a particular machine . . .

Chen, Col. 87, lines 53-55. The cited passage fails to provide any teaching, suggestion, or disclosure that the statistics indicate a *change* in system usage, let alone indicate a change in system usage from a first time period to a second time period. Accordingly, Applicant respectfully submits that the cited portion of *Chen* does not disclose, teach, or suggest that the statistics indicate a change in system usage from a first time period to a second time period.

In addition, *Chen* also fails to disclose, teach, or suggest the following of Claim 1:

determining whether the system usage pattern of the first application satisfies a predetermined criteria associated with one or more problems.

The “alarm” feature of *Chen* identified by the Examiner, merely “consists of an action part that describes what action to trigger and a condition part that defines the conditions for triggering the alarm.” *See Chen*, col. 91 lines 30-33. For example, “if it is desired to be informed whenever the paging space on a host has less than 10 percent free or there is less than 100 pages free paging space, an alarm definition like the following could be used” *Id.* at col. 92 lines 56-60. Respectfully, the alleged alarms of *Chen* merely inform a user when a user-defined condition occurs. The alarms of *Chen* do not “determin[e] whether a system usage pattern of a first application satisfies a predetermined criteria associated with one or more problems” as required by Claim 1.

For at least these reasons, Applicant respectfully submits that independent Claim 1 and its dependent claims are allowable under 35 U.S.C. § 102 over *Chen*. For analogous reasons, independent Claims 12, 14, 15, 17, 18, and 19 and their respective dependent claims are allowable under 35 U.S.C. § 102.

B. *Chen* does not disclose all of the limitations of Claim 9

Applicant respectfully submits that *Chen* fails to disclose, teach, or suggest, “a number of processes that each of the one or more applications have spawned” as recited in Claim 9. The portion of *Chen* relied upon by the Examiner for teaching this limitation merely discloses an ability to monitor and control processes:

An important component of system and network performance tuning is the ability to access and alter the course of a process execution while it is running from any node in the system. . . . The system administrator needs to be able to adjust the priorities of processes to assure the smooth flow of work through a network of systems as well as to kill processes that have become “pathologically insane”, or running rampant.

Chen, Col. 93, lines 13-25. The Examiner has not pointed to any portion of *Chen* that teaches, suggests, or discloses that the processes were spawned by an **application**. Moreover, Applicant respectfully notes that the Examiner identifies a **process** ID of *Chen* as the “identifier of a first **application**” recited in Claim 10. *See Office Action*, page 5. Applicant respectfully submits that it is improper for the Examiner to rely on the processes disclosed in *Chen* as both a **process** and an **application** to reject the pending claims. Thus,

for at least these reasons, Applicant respectfully submits that Claim 9 is allowable under 35 U.S.C. § 102 over *Chen*.

II. Claim Rejections under 35 U.S.C. § 103

In the *Office Action*, the Examiner rejects Claims 2, 3, and 20 under 35 U.S.C. § 103(a) over *Chen* in view of U.S. Patent No. 5,485,626 to Lawlor et al. ("*Lawlor*"). Applicant respectfully traverses these rejections.

A. The proposed *Chen-Lawlor* combination does not disclose all of the limitations of Claim 2.

Claim 2 is directed to the method of Claim 1, "wherein the system resource usage comprises a number of the one or more processes that each of the one or more applications have spawned and the predetermined criteria comprises exceeding a predetermined limit on the number of processes that each of the one or more user applications may spawn." The Examiner concedes that *Chen* fails to disclose a "predetermined limit on the number of processes that each of the one or more user applications may spawn." Accordingly, to reject these limitations, the Examiner cites to a "work synchronization" feature of *Lawlor* at Col. 47, lines 28-42. *See Office Action*, page 12.

According to *Lawlor*, "synchronization" is "the guarantee that an order or point of execution can be specified among two or more tasks." *Lawlor*, Col. 1, lines 46-51. To facilitate work synchronization *Lawlor* discloses a "SETCLV instruction [that] sets limits to the number of processes spawned." *Lawlor*, Col. 47, lines 28-29. When the spawn count is "equal to the count limit set by the Set Count Limit Value (SETCLV) . . . the parent process executes the next sequential instruction (NSI)." *Lawlor*, Col. 47, lines 38-41. Thus, *Lawlor* discloses performing an action when the count is *equal* to the SETCLV. Claim 2, however, requires performing an action (identifying the first application to a user) if the system usage pattern *exceeds* the predetermined limit on the number of processes that each of the one or more applications may spawn. Moreover, Applicant respectfully submits that the limit on the number of processes spawned disclosed in *Lawlor* is not associated with one or more problems as required by Claim 2. Thus, for at least these reasons, the proposed *Chen-Lawlor* combination fails to disclose, teach, or suggest all of the limitations of Claim 2. Accordingly,

Applicant respectfully submits that Claim 2 is allowable over the *Chen-Lawlor* combination under 35 U.S.C. § 103(a).

B. The proposed *Chen-Lawlor* combination does not disclose all of the limitations of Claim 3.

Claim 3 is directed to the method of Claim 1, wherein “determining whether a system usage pattern of the first application satisfies a predetermined criteria associated with one or more problems comprises determining whether the first application has orphaned one of the one or more running processes.” The Examiner again points to the “work synchronization” feature of *Lawlor* to teach this limitation.

The portion of *Lawlor* cited by the Examiner provides:

Then the SETCLV instruction sets limits to the number of processes spawned. The EQTDE instruction spawns the processes; e.g., this is the "fork". In the example illustrated, in addition to the main line of application code (i.e., the "parent"), there are three processes (i.e., children) spawned. The main line of code continues until it issues the Receive Count (RECC) instruction. The spawned processes execute until complete at which time they each, in turn, encounter the Send Count (SENDCL) instruction. The spawned processes or threads terminate with the Dequeue Thread Dispatch Element (DQTDE) instruction. The count sent by the second of the spawned processes is equal to the count limit set by the Set Count Limit Value (SETCLV) instruction, at which point the parent process executes the next sequential instruction (NSI).

For the JOIN, the FORTRAN compiler generates an SRC (Thread Send/Receive Counter) and the inline code RECC SRC.sub.-- address. For the FORK (activate parallel thread) function, the compiler generates code to increment the SRC counter limit value. This keeps track of the number of parallel tasks.

Lawlor, Col. 47, lines 28-42. Applicant respectfully contends that *nothing* in this portion of *Lawlor* discloses, an “orphaned process”, let alone “determining whether the first application has orphaned one of the one or more running processes” as required by Claim 3. Moreover, to the extent that the Examiner intends to maintain this rejection, Applicant respectfully requests the Examiner to more specifically identify which portions of this section support the rejection so that Applicant may respond accordingly. For at least these reasons, Applicant respectfully contends that Claim 3 is in condition for allowance.

No Waiver

All of Applicant's arguments are made without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later response or on appeal, if appropriate. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections. In addition, Applicant does not acquiesce to the Examiner's statements, regardless of whether Applicant has responded to the statements.

CONCLUSION

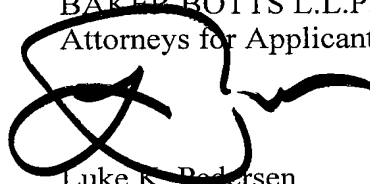
Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicant.

Applicant believes no fees to be currently due. However, if a fee is determined to be due, the Commissioner is authorized to charge such fee, or credit any overpayment, to **Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.**

Respectfully submitted,

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